



BEFORE THE HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Gr. A. 801/04

Appellants : -

1. Girish Chandra Sharma
son of Late R.S.Sharma
aged -about- 42 years,
Occupation- Advocate,
resident of : Baiga Para,
Durg (Chhattisgarh) .
2. Ku. Neeta Jain Daughter of
Shri Sajjan Mal Bothara,
aged about- 38 years,
Occupation- Advocate,
resident of - Mahavir Colony,
Durg, Tahsil and Distt.
Durg (Chhattisgarh) .

V E R S U S

1. Respondents :-

1. Jagdamba Prasad Rai
son of unknown,
aged about 48 years,
Occupation :- service,
Designation :-
Chief Judicial Magistrate,
Durg (Chhattisgarh).

In Compliance of court
order dated 29-10-04
and 3-12-2004 Amendment
incorporated by me

2. Prem Prakash Pandey
son of Ram Ratan Pandey,
aged about- 48 years,
Occupation- Politician ,
Present Designation :-
Speaker, Chhattisgarh,
Leslative Assembly,
Chhattisgarh State,
Raipur (Chhattisgarh) .

3. Prahlad Kumar Tiwari
son of D.K. Tiwari,
aged about- 72 years,
Occupation :- Advocate,

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resident of - Brahman Para, Durg,
Opposite -Durga Mandir, Durg.
Designation :- At present-
Member, Chhattisgarh State
Bar Council, Bilaspur (C.G.).

4. Shri S.K. Shrivastava son of
unknown , aged about- 50 years,
Occupation :- Service,
Designation :- Chief Prosecution
Officer, Durg (C.G.).
5. R.P. Sharma son of Unknown ,
aged - 55 years , Occupation-
service , At present- District
Additional District Superintendent
of Police, At present working as
Superintendent of Police, Durg,
Tahsil and Distt. Durg (C.G.).
6. Rajeev Pandey son of Late R.P.
Pandey, aged -about- 46 years,
Occupation :- Advocate,
Present Designation : President,
District Bar Association, Durg ,
Tahsil and Distt. Durg (Chhattisgarh).
resident of : Padmanabhpur, Durg. (C.G.)

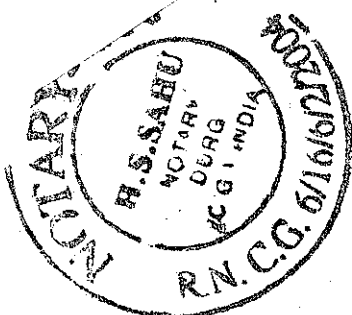
In compliance of 7.
Court order date 29-10-04
and 3-12-04 Amendment
incorporated by me

State Government of Chhattisgarh,
Through :- ~~Chief Secretary,~~
~~Chhattisgarh State Government,~~
~~Raipur, Tahsil and Distt. Raipur~~
~~Chhattisgarh.~~

Police station/ Kotwali
Chhawani, Distt. DURG (C.G.)

APPEAL UNDER SECTION 341 CRIMINAL PROCEDURE X CODE, 1973.

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HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.801 OF 2004

Girish Chandra Sharma & Another

Vs.

Jagdamba Rai & Others

ORDER

Post for: 3/12/2004

Sd/-
Fakhruddin
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.801 OF 2004

**Girish Chandra Sharma & Another
Vs.
Jagdamba Rai & Others**

Shri Santosh Yadu for the appellants.
Appellant no.1 appears in person.
Shri Pramod Verma, Addl.A.G., appears for the State.
Respondent no.1 appears in person.
Shri M.D. Dhote appears for respondent no.2.
Shri Y.C. Sharma appears for respondent no.3.
Shri Ajay Shrivastava appears for respondent no.4.
Shri Awadh Tripathi appears for respondent no.6.

ORDER

Heard the learned counsel for the parties.

2. The appellants have preferred this appeal under Section 341 Cr.P.C. arising out of the order dated 27/8/2004 passed by the Sessions Judge, Durg in Misc. Criminal Case No.32/2004.
3. Learned counsel S/Shri Dhote, Sharma, Shrivastava and Tripathi submit that the memo of appeal has not been properly worded. It is submitted that in the memo of appeal the language used is scandalous and vexatious at some places.
4. Counsel for the appellants and appellant no.1 present in the Court stated that the appellants have highest respect for the Court. They have no personal grudge. They never intended and are sorry. It is stated that they want to withdraw the matter. Time was given to the appellant to file an application in this regard. The application has been filed and the copy has been supplied to other side. It was called for on request. The arguments were heard.

5. A perusal of the memo of appeal shows that the appellants had impleaded respondent no.1 by name and by designation. Respondent no.1 is a Judicial Magistrate. He ought not to have joined as a party. His joining is unjustified and is deleted. Respondent no.3 is an Advocate and the Member of the State Bar Council. While giving description, his membership has been shown. This is not required. Respondent no.4 is a Prosecutor. He has been joined by name. He appeared on behalf of the prosecution. Respondent no.6 has been joined in the capacity of President, District Bar Association. Likewise respondent no.7/Chief Secretary has been joined unnecessarily and he has nothing to do.

6. It is noted that the parties have been joined without going through the relevant provisions. Joining of the parties has to be in accordance with law.

7. It is worthwhile to mention here that the name of the Governor has also been mentioned as witness. Great care is required. Article 361 of the Constitution of India is pertinent. Article 361 relates to the protection of President and Governors and Rajpramukhs, which reads as under:

"361. Protection of President and Governors and Rajpramukhs. - (1) The President or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring

appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

Even if some documents or some facts are required to be established calling such record, Governor ought not to have been cited as the witness. There is a procedure prescribed if certain document is required.

8. All these questions are important when the appellants themselves are the Advocates. Great caution is required. It is pertinent to refer the following passage mentioned in Chapter II of the Bar Council of India Rules:

"An advocate shall, at all times, comfort himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate."

9. The appellants should not forget that they are Advocates and as such enrolled as Members of the Bar. Bar certainly has duty to

be fearless and act independently, but that does not mean it should intimidate the Judges and officers of Court including Defence Lawyers and Prosecutor. The duty of the Advocate is also not to indulge in intimidation of the Judges and Officers of the Court. Their duty is to uphold dignity of the Court. It is only then that the Bar's dignity enhances. If the Bar puts the Judges to indignity, a day will come that the public will have no faith in the institution. It is really an intimidation on the part of a lawyer to join a Magistrate/Chief Judicial Magistrate and his colleagues who discharge their duty to put them in the dock for trial.

10. In **A.K. Singh vs. Virendra Kumar Jain** reported in **2001(2) MPJR 15**, it has been observed as under:

"Independence of judiciary in its function necessarily warrants that the Judges at the lowest rank and rung of ladder should be able to act without fear of harassment or intimidation. It is really an intimidation on the part of a lawyer to file a complaint against a Magistrate to put him in the dock for trial for alleged offences which do not exist. It is the duty of the supervising Judge to see that his subordinates act fairly, but also that they act fearlessly and not in constant fear of intimidation by some unscrupulous member of the Bar or those who appear before them. If one level of Judges by sheer ignorance of law or carelessness or deliberately permit its subordinate Judges to be harassed or intimidated like this, the whole judicial system suffers and administration of justice is put to great risk. It brings the system into disrepute and makes the concerned Judge a laughing stock at both levels."

11. It was in **Leeladhar Baurasi vs. Shiv Mohan Singh Parihar** reported in **1993 (1) MPJR 336** that the matter was considered by the Madhya Pradesh High Court, wherein a complaint against the Judge containing scandalous allegations

relating to act done in discharge of judicial duty was held to be abuse of the process of law.

12. Section 3 of the Judges Protection Act is also relevant and quoted below:

"3. Additional Protection to Judges- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil criminal proceedings against any person who is or was a Judge for any act, thing or word committed done spoken by him when, in the Of, acting or in the Of, acting or purporting to act in discharge of his official or judicial duty or function."

13. It is to be noted that forceful advocacy and use of strong language is one thing but to impute to it unjudicial motives for which there is no reasonable basis is another thing and has to be dealt with in accordance with law. It is undeniable that no judiciary can function unless there is strong, efficient, conscientious and independent Bar and a weak inefficient and unconscientious Bar is a somewhat ineffective corrective to an erring Court.

14. It is however to be remembered that the practice of law is not a business which is open to all those who desire to engage in it. It is a personal right and privilege of an Advocate to represent his client, and claim audience in Court in order to plead for him. An advocacy is an exalted and a learned profession in which privilege and duty coincide: the professional lawyer's privilege being also his duty and his duty being also his privilege. This indeed is essential if the quality of justice in our country is to be of the expected high order as contemplated by our Constitution.

15. An Advocate in our set-up practices not only law, but also the science of the correct use of language. The words are indeed his tools with which he works. His is accordingly a word-bound profession. The language he uses must, therefore, be precise, dignified, respectful and persuasive, free from injudicious annoyance or offence. Being entrusted with the duty and privilege of securing for his client justice according to law an Advocate is entitled to appropriate freedom and scope in criticising the impugned judgments and orders and in addressing arguments and making submissions on behalf of his client. Oral arguments by an Advocate, from their very nature, are relatively speaking accorded greater latitude than written memorandum of appeal or revision. But this privilege, which is also his duty, does not extend to imputing extraneous unjudicial motives to the subordinate Courts, which cannot be substantiated or held to be reasonably justified on the record. If, however, they can be so substantiated, then a submission or pleading would amount to actionable contempt of Court.

16. Being an officer of the Court, it is the duty of the Advocate to uphold the dignity and prestige of the Courts in which he practices as also of the Courts, the orders of which it is his professional privilege and duty to criticize, consistently with his loyalty to his client's cause, which he is engaged to plead in accordance with law. The language an Advocate uses should be sober.

17. In the aforesaid connection, it is useful to refer the decision of the Delhi High Court in the case of Banarsilal vs. Smt. Neelam

and others reported in AIR 1969 Delhi 304, wherein it has been held as under:

" forceful advocacy and even use of strong language in criticising on appeal or revision the impugned decisions of subordinate Courts is not contempt but forceful advocacy and use of strong language does not mean that an advocate can scandalize the Court or impute to it unjudicial motives for which there is no reasonable basis on the circumstances of the case. It is undeniable that no judiciary can function with the requisite efficiency in a set-up like ours unless there is strong, efficient, conscientious and independent Bar and a weak inefficient and unconscientious Bar is a somewhat ineffective corrective to an erring Court. The practice of law is not a business which is open to all those who desire to engage in it. It is a personal right and privilege of an Advocate to represent his client, and claim audience in Court in order to plead for him. An advocacy is an exalted and a learned profession in which privilege and duty coincide: the professional lawyer's privilege being also his duty and his duty being also his privilege. This indeed is essential if the quality of justice in our country is to be of the expected high order as contemplated by our Constitution.

An Advocate in our set-up practices not only law, but also the science of the correct use of language. The words are indeed his tools with which he works. His is accordingly a word-bound profession. The language he uses must, therefore, be precise, dignified, respectful and persuasive, free from injudicious annoyance or offence. Being entrusted with the duty and privilege of securing for his client justice according to law an Advocate is entitled to appropriate freedom and scope in criticising the impugned judgments and orders and in addressing arguments and making submissions on behalf of his client. Oral arguments by an Advocate, from their very nature, are relatively speaking accorded greater latitude than written memorandum of appeal or revision. But this privilege, which is also his duty, does not extend to imputing extraneous unjudicial motives to the subordinate Courts which cannot be substantiated or held to be reasonably justified on the record. If, however, they can be so substantiated, then I am unable to accede that such a submission or pleading would amount to actionable contempt of Court. Being an officer of the Court, it seems to be an Advocate's duty to uphold the dignity and prestige of the Courts in which he practices as also of the Courts, the orders of which it is his professional privilege and duty to

criticize, consistently with his loyalty to his client's cause, which he is engaged to plead in accordance with law. The administration of justice cannot be impaired by clothing the professional advocate with the freedom to fairly and temperately criticize in good faith the impugned judgments and orders.

When the judicial impartiality and practice of Courts has solid foundation in their traditional judicious objectivity and efficiency, as illustrated by their day-to-day functioning in the public gaze, the mere strong language in criticizing their orders, cannot mar their image. Such Courts should not be hyper-sensitive in this matter."

18. Since the appeal is being withdrawn, it is permitted to be withdrawn and the learned counsel appearing stated that they have the respect for all the Courts including the Courts of Chief Judicial Magistrate and District Judge and since this is reiterated at the Bar, the application for withdrawal is allowed. However, the Advocates and the appellants to be very careful in future and they should strictly follow the rules framed by the Bar Council of India.

19. In view of what has been stated above, the appeal stands disposed of as withdrawn.

20. Before parting, it is made clear that whatever has been stated above in this order is with respect to the appeal before this Court and this Court has not expressed any opinion in the matter pending before any other Court. In case any matter is pending before any other Court, the same shall be decided on its own merits strictly in accordance with law.

Hande/-

Sd/-
Fakhruddin
Judge
3/12/2004.